

EXHIBIT B

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17 UNITED STATES DISTRICT COURT

18 NORTHERN DISTRICT OF CALIFORNIA

19 SAN FRANCISCO DIVISION

20
21 ORACLE CORPORATION, a Delaware
22 corporation, ORACLE USA, INC., a Colorado
23 corporation, and ORACLE INTERNATIONAL
24 CORPORATION, a California corporation,

25 Plaintiffs,
26 v.
27 SAP AG, a German corporation, SAP
AMERICA, INC., a Delaware corporation,
TOMORROWNOW, INC., a Texas corporation,
and DOES 1-50, inclusive,

28 Defendants.

Case No. 07-CV-01658 (MJJ)

NOTICE OF DEPOSITION OF
TOMORROWNOW, INC.
PURSUANT TO FED. R. CIV. P.
30(b)(6)

Contains information designated
Confidential pursuant to Protective Order

Case No. 07-CV-01658 (MJJ)

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that plaintiff Oracle Corporation (“Oracle”), through
3 its counsel, shall conduct the deposition of defendant TomorrowNow, Inc. (“You” or “SAP TN”)
4 regarding the topics of examination set forth below. The deposition will be taken at the law
5 office of Jones Day, 717 Texas, Suite 3300, Houston, Texas, 77002-2712, and will commence at
6 9:00 a.m. on January 22, 2008, continuing day to day, Sundays and holidays excepted, until
7 completed. SAP TN is directed, pursuant to Federal Rule of Civil Procedure 30(b)(6), to
8 designate one or more officers, directors, managing agents, or other persons who can testify on
9 behalf of SAP TN with respect to the matters set forth below.

10 The examination shall be conducted before an officer or other person authorized
11 to administer oaths pursuant to Rule 28 of the Federal Rules of Civil Procedure. The testimony
12 at the deposition will be recorded stenographically by a qualified certified shorthand reporter
13 who is authorized to administer the oath, through instant visual display means (Live Note), and
14 by video. Parties wishing to see the real time display must supply their own computer. Oracle
15 reserves the right to use the written transcript or video as evidence in the trial of this matter.

16 **DEFINITIONS**

17 For purposes of this Notice of Deposition, the following definitions shall apply,
18 unless otherwise indicated:

19 1. “Customer” refers to Your current and former customers and clients,
20 including, without limitation, all customers listed or described on Your website.

21 2. “Customer Local Environment” means a copy of a PSFT or JDE branded
22 software release obtained from a Customer or other source which is or was at any time
23 maintained locally by TomorrowNow (as discussed by Mark Kreutz and Shelley Nelson at their
24 depositions on October 29, October 30, and December 6, 2007).

25 3. “Distribute” or “Distribution” means to make available to a Customer,
26 another third party, or to another party to this action, through any means.

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1 4. "Download" or "Downloading" means any duplication, copying, transfer, or
2 replication, in whole or in part, of any file, document, data, or other information from an outside
3 source connected through the internet to a computer, server, or network that is part of another
4 Person's computer infrastructure or subject to that Person's control.

5 5. "Employee(s)" means past and present officers, executives, directors,
6 employees, attorneys, agents, representatives, and other Persons acting or purporting to act on
7 behalf of the entity to which the term refers.

8 6. "Facilities" means any building or part of any building, structure, or real
9 property owned, rented, leased, or controlled by You and used in any way to provide or to assist
10 in providing software support services, including without limitation offices, call centers,
11 Downloading facilities, training facilities, data or other storage facilities, or other places where
12 Your Employees work.

13 7. "Master Library", also referred to as a master folder, means any manner or
14 means of storing Software and Support Materials obtained using the credentials of more than one
15 Customer to Download them from Oracle's systems, in a pooled fashion that does not separate
16 them into separate, client specific folders (as discussed by Mark Kreutz in his deposition on
17 October 29, 2007).

18 8. "Oracle" means plaintiffs Oracle Corporation, Oracle USA, Inc., and Oracle
19 International Corporation, their predecessors, and their successors.

20 9. "Person(s)" means, without limitation, any individual or entity.

21 10. "SAP America" means defendant SAP America, Inc., its predecessors,
22 successors, employees, directors, managers, consultants, agents, and any other Person acting on
23 its behalf.

24 11. "SAP AG" means defendant SAP AG, its predecessors, successors,
25 employees, directors, managers, consultants, agents, and any other Person acting on its behalf.

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1 12. "SAP TN," "You," and/or "Yours" means defendant TomorrowNow, Inc., its
2 predecessors, successors, employees, directors, managers, consultants, agents, and any other
3 Person acting on its behalf.

4 13. "Software and Support Materials" means, without limitation, all program
5 updates, software updates, bug fixes, patches, custom solutions, and instructional materials,
6 created or owned by Oracle, or derived from, copied from, or based on any such materials,
7 including by SAP AG, SAP America, or SAP TN, across the entire family of PeopleSoft and JD
8 Edwards branded products.

9 14. To "Use" means to maintain, manage, store, or otherwise interact with.

10 **SCOPE OF TESTIMONY**

11 Unless otherwise stated, the time period covered by this Notice of Deposition
12 shall be from January 1, 2004 to and including the date of the examination.

13 1. Your creation and Use of Customer Local Environments, including without
14 limitation:

- 15 a. Your acquisition of Oracle's PSFT and JDE Software from Customers or any
16 other source;
- 17 b. The manner and method by which Customer Local Environments were created,
18 stored and Used by You;
- 19 c. The identity of all PSFT and JDE Customers for whom You created any type of
20 Customer Local Environment;
- 21 d. The total number of Customer Local Environments created for each identified
22 Customer;
- 23 e. The name, release, and version of all PSFT or JDE branded Software obtained
24 and/or copied to create each identified Customer Local Environment;
- 25 f. The identity and description of all Customer Local Environments maintained in
26 any way by You relating to Customers for whom You had ceased to provide
27 support services;

- 1 g. The identity and description of all Customer Local Environments Used by You in
2 any way to support any Customer other than the one that provided the Software
3 Used to create the Customer Local Environment;
4 h. The “off-boarding” process relating to Customer Local Environments for
5 Customers who leave SAP TN support, including without limitation: 1) whether
6 copies of any Customer Local Environments are destroyed or deleted; 2) the
7 manner and method for creating any back-up of the Customer Local Environment;
8 and 3) the storage of any created back-up for any Customer Local Environment;
9 i. Any instances in which a backed-up Customer Local Environment was restored,
10 including without limitation any instance in which a back-up of a Customer Local
11 Environment was restored for a Customer that left SAP TN support but later
12 returned;
13 j. A description of all methods and means You Used with any Customer Local
14 Environment to support any Customer other than the one that provided the
15 Software Used to create that Customer Local Environment;
16 k. All ways in which You supported any Customer using a Customer Local
17 Environment created with Software obtained from a different Customer, including
18 without limitation the name, description, date created, date delivered, exact
19 recipients, and identities of all involved SAP TN personnel and, of any Support
20 Material created, developed, or modified for one Customer using a Customer
21 Local Environment created with Software from a different Customer;
22 l. The process by which Customer Local Environments were Used as part of the
23 ordinary course of business for SAP TN, including without limitation to on-
24 boarding of new Customers; support of Customer cases, issues, and problems;
25 reactive and proactive development of bug fixes, updates, patches, explanations,
26 or regulatory changes for Customers; research into and design of those changes;
27 troubleshooting for Customers; and testing of other operating system levels;

- 1 m. Any instance in which the existence and Use of Customer Local Environments
 2 was communicated to anyone at SAP AG or SAP America, including during the
 3 negotiation of the acquisition by SAP AG or SAP America of SAP TN.
 4 n. Any instance in which anyone from SAP AG or SAP America was given or had
 5 access to any Customer Local Environment or any Support Material created using
 6 such Customer Local Environment; and
 7 o. All policies, and communications with Customers, relating to the creation and
 8 Use of Customer Local Environments.

9 2. The creation and Use of the Master Library in which Downloads of Customers

10 Kountz Wagner or Praxair were stored, and any similar or equivalent Master Library for any
 11 PSFT Customers, including without limitation:

- 12 a. The process by which the Master Library was created;
- 13 b. The process by which it was Used;
- 14 c. How and where the Master Library was stored;
- 15 d. Any possible back-up of the Master Library after Customer-specific folders were
 created, including the AA Cleanup folder and possible local storage;
- 16 e. The process by which Downloads in the Master Library were identified; and
- 17 f. The process by which Downloads from the pooled Master Library were split and
 copied into Customer-specific folders, including without limitation documents
 related to the splitting process and identification of the SAP TN team members
 who were involved in the splitting process.
- 22 g. The creation and Use of Information Station.

23 3. The source code that is “exploded” on the AS/400, as described by Mark Kreutz

24 at his deposition on October 30, 2007, including without limitation:

- 25 a. The movement of Downloaded items from Customer libraries to the AS/400;
- 26 b. The manner, method, and purpose of “exploding” Downloaded items;
- 27 c. The purpose of creating a list of objects resulting from the explosion process to

1 bring back to the Customer's Download libraries and indexing with Information
2 Station;
3 d. The Use for any purpose of the exploded files on AS/400;
4 e. Any instances in which any source code on the AS/400 was Used in any way by
5 SAP TN;
6 f. How source code on the AS/400 is identified by Customer, if at all.

7 DATED: December 20, 2007
8

9 By: 

10 Zachary J. Alinder
11

12 **BINGHAM MCCUTCHEN LLP**
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19 Attorneys for Plaintiffs
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21 and Oracle International Corporation
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PROOF OF SERVICE

I am over 18 years of age, not a party to this action and employed in the
County of San Francisco, California at Three Embarcadero Center, San Francisco, California
94111-4067. My email address is cindy.short@bingham.com. I am readily familiar with the
practice of this office for collection and processing of correspondence by U.S. Mail and
Electronic Mail, and they are deposited and/or sent that same day in the ordinary course of
business.

8 Today I served the following documents:

**NOTICE OF DEPOSITION OF TOMORROWNOW, INC.
PURSUANT TO FED. R. CIV. P. 30(b)(6)**

- (BY ELECTRONIC MAIL) by transmitting via electronic mail document(s) in portable document format (PDF) listed below to the email address set forth below on this date.

(BY MAIL) by causing a true and correct copy of the above to be placed in the United States Mail at San Francisco, California in sealed envelope(s) with postage prepaid, addressed as set forth below. I am readily familiar with this law firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence is deposited with the United States Postal Service the same day it is left for collection and processing in the ordinary course of business.

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I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made and that this declaration was executed on December 20, 2007, at San Francisco, California.

Cynthia Short

Case No. 07-CV-01658 (MJJ)